Australia

Country Reports on Human Rights Practices - 2002
Released by the Bureau of Democracy, Human Rights, and Labor
March 31, 2003

Australia is a longstanding constitutional democracy with a federal parliamentary form of government in which citizens periodically choose their representatives in free and fair multiparty elections. The judiciary is independent.

Federal and state police are under the firm control of the civilian authorities and carried out their functions in accordance with the law. There were occasional reports that police committed abuses.

The country has a population of approximately 19,500,000. Its highly developed market-based economy, which includes manufacturing, mining, agriculture, and services, provided citizens with an average per capita income of approximately $18,700. A wide range of government programs offered assistance for disadvantaged citizens.

The Government generally respected the human rights of its citizens, and the law and judiciary provide effective means of dealing with individual instances of abuse. There were occasional reports that police beat or otherwise abused persons. Several inquiries during the year, including one prepared by the United Nations Human Rights Commission, expressed concern over the impact of prolonged mandatory detention on the health and psychological wellbeing of asylum seekers. Some leaders in the ethnic and immigrant communities and opposition political party members expressed continued concern at conditions in immigration detention centers and instances of vilification of immigrants and minorities. The Government administered many programs to improve the socioeconomic conditions of Aboriginals and Torres Straits Islanders, who together form about 2 percent of the population, and to address longstanding discrimination against them. Societal violence and discrimination against women were problems that were being addressed actively. There were some instances of forced labor in the past, but none were identified during the year. There was some trafficking in women, which the Government was taking steps to address. There was ongoing criticism of the 1996 Federal Workplace Relations Act by domestic labor unions and the International Labor Organization (ILO), particularly in regard to the law's restrictions on multi-enterprise agency bargaining and its emphasis on individual employment contracts. The ILO asserted that these provisions are in violation of international labor covenants. Australia was invited by the Community of Democracies' (CD) Convening Group to attend the November 2002 second CD Ministerial Meeting in Seoul, Republic of Korea, as a participant.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports of the arbitrary or unlawful deprivation of life committed by the Government or its agents. However, a report by the Australian Institute of Criminology, an agency of the Attorney General's Department, revealed that in 2001, 87 persons had died in prison, in police custody, or in the course of arrest, a slight decrease from the 91 deaths in 2000. Police fatally shot four persons and the cause of death was not identified in two cases. Of the remainder, 25 deaths were attributed to suicide by hanging, 31 to natural causes, 20 to multiple injuries sustained during high-speed car chases, 3 to unspecified injuries, 1 to a drug overdose, and 1 to self-inflicted gunshot wounds. The police were cleared in all cases in which they were involved (see Section 1.c.).

On January 8, a woman died in the Villawood immigrant detention center near Sydney, the only known death in an immigration detention facility. A coroner's inquest found that death resulted from injuries sustained in a fall; no determination could be made as to the cause of the fall.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits all such practices; however, there were occasional reports that police mistreated suspects in custody. Some indigenous groups charged that police harassment of indigenous people was pervasive and that racial discrimination among police and prison custodians persisted. Amnesty International (AI) reported several incidents that involved such abuses. State and territorial police forces have internal affairs units that investigate allegations of abuse and report to a civilian ombudsman. In the 12 months prior to June 30, 73 New South Wales police officers were charged with criminal offenses ranging from assault to inappropriate access to information. Seven Queensland police officers were charged with criminal offenses during the same period.

In 2001, the most recent year for which statistics were available, there were 87 deaths in custody or during arrest (see Section 1.a.). In past cases where deadly force was used, the circumstances of the case were reviewed and police were sanctioned in cases where abuses were found to occur. There were no cases during the year in which police were disciplined for the unjustified use of force.

According to the 2001 census, Aboriginal adults represented 2.2 percent of the adult population but approximately 20 percent of the total prison population, with incarceration rates approximately 15 times that of nonindigenous citizens. Aboriginals accounted for 22 percent of the deaths in custody that year; five died in police custody or during attempts by police to detain them, and fourteen in prison. Of the five deaths in custody, three resulted from injuries and two were found to be justifiable homicides. Of the 14 prison deaths, 8 were suicides by hanging and 6 resulted from natural causes.

Prison conditions generally met international standards, and the Government permitted visits by independent human rights observers. Within the country, each state and territory is responsible for managing its own prisons. After a 2001 death in custody, the Tasmanian government implemented extensive reforms in prison operations.

The Federal Government oversaw six immigration detention facilities located in the country and several offshore facilities in the Australian territory of Christmas Island and in the countries of Nauru and Papua New Guinea. These facilities were used to detain individuals who attempted to enter the country unlawfully, pending determinations on their applications for refugee status. In May the 6 onshore centers held 1,258 detainees. By the end of November, the two offshore facilities on Nauru and on Manus Island in Papua New Guinea held 812 asylum seekers. These included 137 on Nauru and 87 on Manus Island whose applications for refugee status had been approved, but who had not been resettled yet. At that point, of the 1,497 asylum seekers who had received determinations of status, 736 claims were upheld and 761 rejected; only 5 persons still had not received an asylum review decision (see Section 2.d.).

Media reports, confirmed by the Government, indicated that at least one person died while in immigration detention during the year. This followed the deaths of three persons in 2001 and one in December 2000 (see Section 1.a.). Hunger strikes, protests, and arson occurred during the year at immigration detention facilities over allegedly poor sanitary conditions, inadequate access to telephones, limited recreational opportunities, decisions to deny refugee status, and delays in processing final appeals of asylum claims. In March approximately 50 detainees escaped from the Woomera detention center after a group of refugee activists broke into the facility. Most of the fugitives were captured within a few days, but a few remained at large at year’s end.

d. Arbitrary Arrest, Detention, or Exile

The law prohibits arbitrary arrest and detention, and the Government generally observed these prohibitions in practice. The law provides that law enforcement officials may arrest persons without a warrant if there are reasonable grounds to believe a person has committed an offense. Law enforcement officials can seek an arrest warrant from a magistrate when a suspect cannot be located or fails to appear. Once individuals are arrested, they must be informed immediately of the grounds of arrest and of their rights under the law. Once taken into custody, a detainee must be brought before a magistrate for a bail hearing at the next sitting of the court. Persons charged with criminal offenses were generally released on bail unless considered a flight risk or charged with an offense carrying a penalty of 12 months' imprisonment or more. Attorneys and families were granted prompt access to detainees. Detainees held without bail pending trial generally were segregated from the rest of the prison population.

In June the Australian Council of Civil Liberties urged a review of the mandatory detention procedures for unauthorized immigrants in effect since 1994, citing a lack of international precedent for detaining asylum seekers and a need for independent oversight of the facilities. The Government responded by noting that immigration detention facilities were monitored by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), using standards developed in consultation with the Commonwealth Ombudsman's office, and were open to inspection by the Ombudsman's office and the independent federal Human Rights and Equal Opportunity Commission (HREOC).

During the year, the Government granted the U.N. High Commission on Refugees (UNHCR) access to these facilities. In May the U. N. Working Group on Arbitrary Detention conducted an investigation into the detention centers and reported on its findings; the U.N. High Commissioner for Human Rights' Special Envoy released another report on the facilities in July. Both reports were critical of the facilities and the Government's policy of detaining children, unaccompanied minors, the elderly, and asylum seekers with disabilities. The Government rejected both reports, asserting they misrepresented government policy, contained many inaccuracies, and commented on issues well beyond the scope of their mandate.

In November 2000, HREOC asserted that in detaining a number of permanent resident convicts indefinitely pending deportation, the Government was in breach of the U.N. International Covenant on Civil and Political Rights. HREOC's March 2001 report asserted that as many as 70 permanent residents, most with Vietnamese nationality, had completed their prison terms but were still in custody pending deportation. A bilateral agreement later that year allowed the return of 35 Vietnamese nationals, and, at year’s end, 10 remained in custody pending deportation.

Neither the Constitution nor the law address exile; however, the Government did not use forced exile.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice.

There is a well-developed system of federal and state courts, with the High Court at its apex. The Federal Court and the High Court have very limited roles, with most criminal and civil trials conducted by state and territorial courts.

The law provides for the right to a fair trial, and an independent judiciary generally enforced this right. A magistrate conducts local court trials. In higher courts such as the state district or county courts and the state or territorial supreme courts, there is generally a judge and jury. The judge conducts the trial, and the jury decides on the facts and on a verdict.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such practices, and the Government generally respected these prohibitions in practice. There were two reported incidents during the year of telephone interceptions of trade union communications, one by the Defense Signals Directorate and the other by the Cole Royal Commission in connection with criminal activity in the building industry. The Government investigated both incidents and concluded that there was insufficient evidence to substantiate allegations that the security forces covertly monitored labor unions.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution does not provide for freedom of speech and of the press; however, in two decisions the High Court has indicated that freedom of political discourse is implied in the Constitution. The High Court also has supported implied constitutional freedom of speech and of the press involving public political discourse. Citizens and the media freely criticized the Government without reprisal. Government officials have occasionally won libel suits against the independent media; however, such judgments have not impeded vigorous media criticism. An independent press, an effective judiciary, and a functioning democratic political system combine to support freedom of speech and of the press, including academic freedom.

b. Freedom of Peaceful Assembly and Association

While the right to peaceful assembly is not codified in law, citizens exercised it without government restriction. There is no explicit right to freedom of association; however, the Government generally respected this right in practice.

c. Freedom of Religion

The law provides for freedom of religion, and the Government generally respected this right in practice.

For a more detailed discussion see the 2002 International Religious Freedom Report.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The law provides for these rights, and the Government generally respected them in practice.

The Government encourages immigration by skilled migrants, family members, and refugees who enter through legal channels.

The law provides for the granting of asylum and refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol, subject to certain geographic and time constraints on claims by those who previously sought asylum in a safe third country. The Government cooperated with the office of the UNHCR and other humanitarian organizations in assisting refugees. There is no provision for first asylum. Federal immigration officials adjudicate refugee status claims based on UNHCR standards. Legal assistance is provided upon request to detainees making an initial asylum claim or application for lawful residence.

In September 2001, Parliament passed legislation that retroactively removed the right of any noncitizen to apply for a permanent protection visa (i.e., the right to live and work permanently in the country as a refugee) if that person's entry was unlawful and occurred in one of several "excised" territories along the country's northern arc: Christmas Island; Ashmore and Cartier Islands; the Cocos Islands; and any sea or resource installation designated by the Government.

Under the law, foreign nationals arriving at a national border without prior entry authorization are automatically detained. Individuals may be released pending full adjudication of their asylum claim only if they meet certain criteria such as age, ill health, or experience of torture or other trauma. However, most asylum seekers were undocumented, with claims that could not be immediately verified, and did not meet release criteria; they were detained for the length of the asylum adjudication process. Upon approval of an asylum claim, a temporary protection visa valid for 3 years is granted. This status, first established in 1999, grants full access to medical and social services but does not authorize family reunification or allow travel abroad with reentry rights. Prior to 1999, asylum claimants were either granted or denied permanent protection visas. This status still exists, and a full protection visa may be issued at any stage of the asylum adjudication process, but those entering unlawfully through an "excised" or designated territory are excluded. In September the Government began the process of reviewing protection claims for the first group granted temporary protection status in 1999. It was not clear what action would be taken with those whose claim to continued protection was not upheld; however, denials of asylum claims may be appealed successively to the Minister for Immigration and Multicultural and Indigenous Affairs, an independent Refugee Review Tribunal, and a Federal court.

In 2001-02 the Government recorded 1,645 unlawful arrivals in the country on 22 boats. A significant rise in asylum claims since 1999, coupled with insufficient staff and resources, has slowed processing of protection claims by DIMIA. The average detention period for those arriving unlawfully by boat during the year was 155 days; however, appealed cases took approximately 15 weeks to process. Previously, the average processing time for a primary decision on a refugee application had been only 6 weeks. However, a small number of asylum seekers have been detained for years pending review and appeal of their claims. In 2001 the Government decided that detention of asylum seekers would not generally be funded for longer than 14 weeks, giving DIMIA a financial incentive to expedite case handling.

The Government's detention policy has led to extensive litigation by human rights and refugee advocacy groups, which charged that the sometimes-lengthy detentions violated the human rights of asylum seekers. In September 2001, HREOC criticized the new Border Protection Act and related legislation, charging that they failed to apply human rights protections equally within all territories. Citing the U.N. International Covenant on Civil and Political

Rights (ICCPR) to which the country is a party, HREOC asserted that the country did not ensure that all individuals within its sovereign territory received the basic human rights protections recognized in the ICCPR.

In 2001 HREOC asserted that the Migration Amendment Bill improperly abridged asylum seekers' right to pursue legal proceedings against the Federal Government for breaches of human rights obligations. Other nongovernmental organizations (NGOs) such as Human Rights Watch voiced similar criticism.

During the year, there were hunger strikes and protests in centers over lengthy processing of final status determinations. In January and again in June, approximately 150 detainees at the Woomera Detention Center went on a hunger strike; up to 40 detainees sewed their lips together in protest. In March and again in June, a group of refugee advocates broke into the Woomera Detention Center, facilitating the escape of approximately 50 detainees on the first occasion and 35 on the second. Most of the fugitives in both incidents were captured within a few days, but more than 10 remained at large at year's end. In April about 100 detainees rioted at the Curtin Detention Center in Western Australia, injuring 28 staff and setting several buildings on fire (see Section 1.c.). At the end of December, detainees at five detention centers set fire to buildings, with damages estimated at $4.35 million (A$8 million). Five detainees were charged with arson.

In May the U. N. Working Group on Arbitrary Detention conducted an investigation into the detention centers. After visiting five facilities, the U.N. group reported that "collective depression" was driving asylum seekers to acts of self-harm and attempted suicide. The investigation expressed deep concern about the policy of detaining children, infants, unaccompanied minors, pregnant women, the elderly, and asylum seekers with disabilities. The Government rejected this criticism, saying that it considered its detention policy successful and saw no reason to modify it.

During the year, the HREOC examined whether the Government's policy of detaining all unauthorized arrivals, including children, breached the Convention on the Rights of the Child to which the country is a party. Their report had not been made public at year's end. Public submissions presented to the HREOC expressed serious concerns over the effects of prolonged mandatory detention on children.

In July the U.N. High Commissioner for Human Rights' Special Envoy released a report on Human Rights and Immigration Detention in Australia. The report called the Government's policy on asylum seekers a "great human tragedy." The envoy charged that the conditions inside the Woomera Detention Centre breached the Convention on the Rights of Child and an international covenant relating to torture and other cruel and degrading treatment. The envoy cited prolonged detention periods as a major concern, alleging these sometimes resulted from lengthy and cumbersome appeal procedures and unnecessary delays. The Government dismissed the report as fundamentally and factually flawed, unbalanced, and emotive, charging it misrepresented government policy and ignored the fact that people in immigration detention had arrived in the country illegally.

However, the Government did act to resolve problems at the centers identified during a yearlong inquiry concluded in early 2001. The inquiry cited infrastructure and management shortcomings at the Woomera Detention Center and inadequate government oversight of the private security firm hired to manage the facility. It concluded that poor supervision at Woomera had allowed humiliating or verbally abusive treatment of detainees by some guards, and also cited improper handling of a child abuse complaint at the facility. The report recommended 16 changes to procedures at the centers, including improvements related to child welfare. The Government publicly supported the report's recommendations and implemented improvements to facilities and services during the year. This included construction of new recreational facilities and extensive landscaping as well as improvements to the educational courses offered at detention centers, including new life skills classes.

During 2001 ships carrying would-be asylum seekers attempting to enter the country illegally were denied permission to enter the country's ports or territorial waters. Some of the ships were rerouted to the country's offshore immigration detention facilities on Christmas Island and in Nauru and Papua New Guinea. In some cases, the would-be asylum seekers reportedly took actions designed to force the Government to allow them to enter the country's territorial waters and to land, such as setting fire to their ships. In these cases, naval vessels effected rescues but did not allow landings or entry to territorial waters. In 2001-02 the Government recorded 1,628 attempted interceptions of intending immigrants on 11 boats that were diverted to offshore processing centers on Manus Island in Papua New Guinea and to Nauru. New Zealand accepted 133 asylum seekers for evaluation and possible resettlement. Immigration officials processed applications for asylum presented at the offshore processing centers. In November DIMIA confirmed that they had made a primary determination of all but 5 of their allocated caseload of 1,502 asylum-seeker claims. Of these, the applications of 141 Afghans, 551 Iraqis, and 44 nationals of other countries were approved. Claims made by the remaining 761 had been rejected, but were eligible for review. As of November, the country had accepted 110 refugees from Manus Island and 192 refugees from Nauru for resettlement. In August departmental officials confirmed that an Afghan man had died at the offshore immigration

center on Nauru. A post-mortem examination by Nauruan authorities concluded that the man had died of natural causes.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercise this right in practice through periodic, free, and fair elections held on the basis of universal suffrage and mandatory voting. In November 2001, citizens elected the Liberal-National Party Coalition to a third 3-year term of office. There also were elections in four of the country's eight states and territories during 2001. The Australian Labor Party (ALP) won all four elections and controlled all state and territorial legislatures at year's end. In February in South Australia voters elected a Labor Party government and in July citizens in Tasmania reelected the Labor Party to a second 4-year term. In November Victoria voters reelected the Labor Party to a second 4-year term.

There are no legal impediments to public office for women and indigenous people. Both the Government and the opposition have declared their intent to increase the numbers of women elected to public office. There are 61 female members in the 226-seat Parliament. There are 4 female Ministers in the 30-member Federal Government Cabinet. There is one female Premier of Chief of State and/or Territories, the Chief Minister of the Northern Territory.

Aboriginals were underrepresented among the political leadership (see Section 5, Indigenous People). One Aboriginal was elected to the Federal Senate in the October 1998 elections. During 2001 an Aboriginal woman was elected to the West Australian state parliament (the first indigenous woman to be elected to a state legislature) and four Aboriginals, including a woman, were elected to the Northern Territory legislative assembly.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. The Government in general has cooperated with human rights groups; however, on occasion it has made it clear that it did not agree with conclusions in reports by some organizations.

The most significant of the country's human rights groups is the federally funded but independent HREOC. During the year, the HREOC examined the Government policy of detaining all unauthorized arrivals, including children, and whether this policy breached the Convention on the Rights of the Child (see Section 2.d.).

Overall, the number of complaints of discrimination received by the HREOC rose slightly, from 1,263 in 2000-2001 to 1,271 in 2001-02. Approximately 55 percent of all cases were not accepted, either because they did not fall within HREOC's mandate or because no discrimination was shown. Another 30 percent were resolved through conciliation, and 14 percent were withdrawn before action could be taken.

In March, after an April and May 2001 visit, the U.N. Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination released his report on the human rights situation in the country. His report indicated that despite efforts by the authorities, much remained to be done to eradicate the legacy of racial discrimination and reduce the social inequalities and extreme poverty that affected the majority of Aboriginals. His recommendations to the Government included: Provide fresh impetus for reconciliation; enter into negotiations with Aboriginal representatives to rectify the "discriminatory nature" of 1998 amendments to the Native Title Act; find a humane solution to the question of the "Stolen Generation" (see Section 5); and intensify efforts to combat racism and poverty experienced by Aboriginals. He further recommended that the Government accede to the Convention on the Elimination of All Forms of Discrimination against Women.

In May the U. N. Working Group on Arbitrary Detention conducted an investigation into the country's detention centers and issued a report criticizing the Government's detention policy (see Section 2.d.).

In 2000 the U.N. Human Rights Commission (UNHRC) urged the Government to do more to secure a stronger, decisionmaking role for indigenous citizens in regard to their traditional lands and natural resources. The UNHRC also urged the Government to do more to provide remedies to members of the Stolen Generation (see Section 5). In addition, the UNHRC recommended review of mandatory sentencing policies (see Section 5) and mandatory detention of illegal arrivals (see Section 2.d.). The Government responded that many of the recommendations were neither necessary nor desirable and reiterated its belief that mandatory detention of illegal arrivals was consistent with its treaty obligations. However, in October the newly elected government of the Northern Territory repealed

the territory's mandatory sentencing laws (see Section 5).

In 2000 the ILO's Commission on Freedom of Association made a series of recommendations regarding the country's labor laws, especially the Workplace Relations Act and the Trade Practices Act (see Sections 6.a. and 6.b.). The Government responded by stating that the ILO's comments "reflect an inadequate understanding of the nation's law," and that the ILO failed to understand the domestic role of certain labor laws. The Government rejected all of the ILO's recommendations.

In 2000 the Government announced the results of a review of its cooperation with U.N. human rights treaty committees. While maintaining its commitment to involvement with the committees, the Government decided to limit visits by such committees to cases where a "compelling reason" existed for the visit. In addition, the Government stated that it would not delay removal of unsuccessful asylum seekers on the basis of an appeal to one of the U.N. human rights mechanisms; previously, such persons had been allowed to remain pending the resolution of that appeal.

Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status

The law prohibits discrimination based on these factors, and the Government and an independent judiciary vigorously enforced the prohibition.

According to a study in 2000 by the Australian Institute of Criminology, 37 murders of homosexual men in New South Wales between 1989 and 1999 were hate crimes. A followup study by the institute found that the perpetrators in these cases were young, exceptionally brutal, and believed society approved of their actions. In its 2000-2001 report, the HREOC stated that it received complaints about discrimination based on sexual orientation; its 2001-02 report did not specifically identify complaints about discrimination based on sexual orientation.

Women

Violence against women was a problem, but there was no consensus on its extent. Some observers estimated that domestic violence might affect as many as one family in three or four. Domestic violence was believed to be particularly prevalent in certain Aboriginal communities, but only the states of Western Australia and Queensland undertook comprehensive studies into domestic violence in the Aboriginal community. It was widely agreed that responses to the problem have been ineffectual.

The Government recognized that domestic violence and economic discrimination were serious problems, and the statutorily independent Sex Discrimination Commissioner actively addressed these and other areas of discrimination. A 1996 Australian Bureau of Statistics (ABS) study (the latest year for which statistics are available) found that 2.6 percent of 6,333 women surveyed who were married or in a common-law relationship had experienced an incident of violence by their partner in the previous 12-month period, and that almost one in four of these women experienced violence by a partner at some time during the relationship.

Prostitution is legal or decriminalized in several states and territories. In some locations, state and local governments inspected brothels to prevent mistreatment of the workers and to assure compliance with health regulations. Child sex tourism is prohibited within the country and for citizens overseas.

There were 14,074 victims of sexual assault recorded by the police in 1999 (the latest figures publicly available; they do not distinguish by gender), a decrease of 1.8 percent from 1998. This amounted to approximately 74 victims of sexual assault per 100,000 persons. Spousal rape is illegal under the state criminal codes.

Past occurrence of female genital mutilation (FGM) was insignificant. However, in the last few years, small numbers of girls from immigrant communities in which FGM is traditionally practiced were mutilated. The Government implemented a national educational program on FGM, in a community health context, to combat the practice. The program was designed to prevent FGM, to assist women and girls who already have been subjected to it, and to promote a consistent approach to the issue nationwide. The Government also allocated funds for the development of state and territory legislation to combat FGM. All states and territories except Queensland and Western Australia have enacted legislation against FGM. In all states and territories where FGM legislation existed, it was a crime either to perform FGM or to remove a child from the jurisdiction for the purpose of having FGM performed. Punishment for these crimes could include up to 7 years in prison.

Trafficking in women from Asia and the former Soviet Union for the sex trade was a limited problem (see Section

6.f.).

Sexual harassment is prohibited by the Sex Discrimination Act. The HREOC 2001-02 report detailed several cases of sexual harassment; HREOC received 195 harassment complaints during this period.

Women have equal status under the law, and the law provides for pay equity. There are highly organized and effective private and public women's rights organizations at the federal, state, and local levels. A federally funded Office of the Status of Women monitored women's rights. The federal Sex Discrimination Commissioner receives complaints and attempts to resolve those that are deemed valid. According to the HREOC 2001-02 report, sex discrimination complaints rose by 18 percent during this reporting period, and 399 new cases were filed during the year. Of these, women filed 88 percent and 85 percent were employment related. Through June the ABS estimated that women's full-time average ordinary weekly earnings were 80.15 percent of men's. However, a study released by the Australian Institute of Management in May 2000 found that women were paid only 66 percent of their male counterparts' wages. This study also found that there were fewer female board members in both large and small companies than in the previous year. Some members of opposition political parties attributed the difference to changes in workplace laws, such as the 1996 Workplace Relations Act, which relies on the use of individual employment contracts that are negotiated privately and thus do not necessarily foster equal pay outcomes. Other commentators suggested that an "old boy's network" could make it difficult for women to negotiate salaries equal to those of their male counterparts.

Children

The Government demonstrated its strong commitment to children's rights and welfare through its publicly funded systems of education and medical care. The Government provides a minimum benefit of 16.8 percent of the cost of a first child's childcare to all parents (with a smaller benefit for additional children), which increases to as much as 100 percent for the lowest income families.

According to the Productivity Commission's Report on Government Services, which was released in 2001, the structure of school education varied among states and territories. Formal schooling begins with 6 to 7 years of primary school followed by 5 to 6 years of secondary school, depending upon the state or territory. Education was compulsory, free, and universal in all states and territories for children between 6 and 15 years of age (and to 16 years of age in Tasmania). Most children in urban areas attended school regularly, and children in rural areas participated in school through radio programs or received government subsidies for boarding school. The report stated that 67 percent of all children completed 12 years of schooling (normally through the final year of secondary education).

The Government provided universal health insurance to all citizens from birth on a copayment basis. There was no discrimination between children and adults or between males and females in the provision of health care.

The HREOC receives complaints regarding children and attempts to resolve those that it finds valid. Similarly, the six states and two territories investigate complaints of neglect or child abuse and institute practical measures aimed at protecting the child when such complaints prove founded. The Government has enacted strict legislation aimed at restricting the trade in, and possession of, child pornography; it allows suspected pedophiles to be tried in the country regardless of where the crime was committed. There was no societal pattern of abuse.

The Government and domestic NGOs responded promptly to the problem of a small number of children who had been smuggled into the country, some for the sex trade (see Section 6.f.). The NGO Childwise, formerly End Child Prostitution, Pornography and Trafficking, conducted an aggressive public education campaign to raise awareness of the issue and offer strategies to combat trafficking in children. Childwise successfully lobbied the Government to conduct police checks of unaccompanied children entering the country to verify that they are not part of a trafficking operation (see Section 6.f.). In 2000 the Department of Family and Community Services released its plan of action against the commercial sexual exploitation of children; however, no information regarding activities resulting from this plan was available.

In 1992 the High Court ruled that the right to consent to the sterilization of a minor was not within the ordinary scope of a parental or guardianship powers, except in limited circumstances. The High Court ruled that the decision to undertake sterilization procedures should be made by an independent body. The Government made the federal Family Courts the arbiters in such cases; since 1998, it has been illegal for a physician to conduct sterilization of a minor without authorization from the Family Court. Physicians who performed such procedures without court authorization were subject to both criminal and civil action. In April a report into the sterilization of girls and young women with disabilities, commissioned by the federal Sex Discrimination Commissioner, found that

the official data were unreliable and that anecdotal evidence suggested that girls continued to be sterilized in numbers that far exceeded the number of lawful authorizations.

During 2001 HREOC asserted that under the Convention on the Rights of the Child, the country's mandatory immigration detention policy violated a child's right not to be deprived of his or her liberty unlawfully or arbitrarily (see Section 2.d.).

Persons with Disabilities

Legislation prohibits discrimination against persons with disabilities in employment, education, or other state services. The Disability Discrimination Commissioner promotes compliance with federal laws that prohibit discrimination against persons with disabilities. The Commissioner also promotes implementation and enforcement of state laws that require equal access and otherwise protect the rights of persons with disabilities.

The law makes it illegal to discriminate against a person on the grounds of disability in employment, education, provision of goods, services, and facilities, access to premises, and other areas. The law also provides for investigation of discrimination complaints by the HREOC, authorizes fines against violators, and awards damages to victims of discrimination.

The 2001-02 HREOC report stated that 478 disability complaints were filed during the 2001-02 reporting year, including 17 complaints of discrimination based on mental disability and 17 complaints based on learning disabilities. Of these 52 percent were employment related and 27 percent concerned the provision of goods and services. The complaints covered a 12-month period.

Indigenous People

The law prohibits discrimination on grounds of race, color, descent, or national or ethnic origin. DIMIA, in conjunction with the elected Aboriginal and Torres Straits Islander Commission (ATSIC), has the main responsibility for initiating, coordinating, and monitoring all government efforts to improve the quality of life of indigenous people. A wide variety of government initiatives and programs seek to improve all aspects of Aboriginal and Torres Straits Islander life. In 2001-02 the Government planned to spend approximately $1.27 billion (A$2.34 billion) on indigenous-specific programs in areas such as health, housing, education, and employment. In real terms, the Government increased funding for Aboriginal benefits by 5 percent over the previous fiscal year. However, indigenous citizens continue to experience significantly higher rates of imprisonment, inferior access to medical and educational institutions, greatly reduced life expectancy rates, elevated levels of unemployment, and general discrimination, which contribute to a feeling of powerlessness. Poverty and low average educational achievement levels contributed significantly to Aboriginal underrepresentation in national, territorial, and state political leadership (see Section 3).

However, Aboriginals and Torres Strait Islanders can participate in government decisionmaking that affects them through the ATSIC. Every 3 years, indigenous people elect representatives to 35 regional councils and the Torres Strait Regional Authority, who in turn choose the 17 commissioners who make up the ATSIC Board. The ATSIC Board advocates for indigenous people on all issues affecting indigenous people and at all levels of government. ATSIC triennial elections for 380 regional councilors were conducted in October. By the end of November, all the regional councils had met and elected the 16 Commissioners who, together with an elected representative from the Torres Strait, form the new ATSIC Board. In December the ATSIC Board re-elected the current Chairman and Vice-Chairman of ATSIC to another term. Voter participation in the elections was higher than in the 1999 elections, and there was a greater than 50 percent turnover in representatives at both the Regional Council and Commission level. Female membership on the 16-member Commission fell from 5 to only 1 member.

Government programs, including a $427 million (A$785 million) indigenous land fund and a "Federal Social Justice Package," are aimed at reducing the challenges faced by indigenous citizens. The indigenous land fund is a trust fund and enables indigenous people to purchase land for their use. It is separate from the Native Title Tribunal and is not for payment of compensation to indigenous people for loss of land or to titleholders for return of land to indigenous people.

The 1993 Native Title Act, which was amended in 1998, established a National Native Title Tribunal to resolve native title applications through mediation. The Tribunal also acts as an arbitrator in cases where the parties cannot reach agreement about proposed mining or other development of land. During the year, the ATSIC noted that the amended act provided gains for Aboriginal people but still contained "substantial pain" for native title claimants. Aboriginal leaders were pleased by the removal of a time limit for lodging native title claims but

expressed deep concern about the weakening of Aboriginal rights to negotiate with non-Aboriginal leaseholders over the development of rural property. Aboriginal groups continued to express concern that the amended act limited the future ability of Aboriginal people to protect their property rights.

In August the High Court ruled that native title rights did not extend to mineral or petroleum resources, and that in cases where leasehold rights and native title rights were in conflict, leaseholder rights prevailed. In December the High Court rejected the Yorta Yorta people's land claim, ending the country's longest-running native title case. The Yorta Yorta claim covered more than 1000 square miles along the Murray River, which flows through New South Wales, Victoria, and South Australia. The court required that the Yorta Yorta people, in order to claim ownership, demonstrate that they had, without interruption and throughout the period of white settlement, practiced a system of native law and tradition on the land in question. Aboriginal leaders voiced concern that this decision would make future claims untenable by establishing too great a burden of proof.

A 1993 survey indicated that 14.25 percent of the country's land is owned or controlled by Aboriginal people, according to the Australian Surveying and Land Information Group. In 2000 the UNHRC stated that the country should do more to secure for indigenous citizens a stronger role in decisionmaking over their traditional lands and natural resources. Also in 2000, the U.N. Committee on the Elimination of Racial Discrimination (CERD) expressed concern that the Government's Native Title amendments would allow the states and territories to pass legislation containing provisions "reducing further the protection of native title claimants." The CERD declared "unsatisfactory" the Government's response to concerns about the Native Title regime expressed in 1999. The Government responded later that year that the laws were passed after full debate in a democratically elected legislature and that the states have a sovereign right to determine land use policy.

According to an ABS report released in March, in 2001 indigenous people throughout the country were imprisoned at 15 times the rate of nonindigenous people. The indigenous incarceration rate was 1,829 per 100,000 adult population, in contrast to a nonindigenous rate of 121 per 100,000. The AIC reported in June 2001 that the incarceration rate among indigenous youth in 2000 was 17.4 times that of nonindigenous youth. Over 45 percent of Aboriginal men between the ages of 20 and 30 years had been arrested at some time in their lives. In 2001 Aboriginal juveniles accounted for 55 percent of those between the ages of 10 to 17 in juvenile corrective institutions. Human rights observers noted that socioeconomic conditions gave rise to the common precursors of indigenous crime, such as unemployment, homelessness, and boredom.

In the past, there was controversy over state mandatory sentencing laws. These laws set automatic prison terms for those with multiple convictions for certain crimes. Human rights groups criticized mandatory sentencing laws, which allegedly resulted in prison terms for relatively minor crimes and disproportionately affected Aboriginals. In 2000 the U.N. Human Rights Commission issued an assessment of the country's human rights record that was highly critical of mandatory sentencing (see Section 4). The Federal Government responded that democratically elected governments passed such laws after full political debate, making it inappropriate for the Federal Government to intervene. The government of the Northern Territory repealed the territory's mandatory sentencing laws in 2001. The ATSIC welcomed this repeal and called upon Western Australia, whose legislation was less sweeping and had been less controversial than that of the Northern Territory, to follow suit. Western Australia continued to retain its mandatory sentencing laws, which made any person (adult or juvenile) committing the crime of home burglary three or more times subject to a mandatory minimum prison sentence.

Indigenous groups charged that police harassment of indigenous people, including juveniles, was pervasive and that racial discrimination among police and prison custodians persisted. Human rights groups and indigenous people alleged a pattern of mistreatment and arbitrary arrests occurring against a backdrop of systematic discrimination; these statements were based on anecdotal information and lacked statistical confirmation.

The ABS report Australia's Health 2000 concluded that the average life expectancy of an indigenous person remained 20 years less than that of a nonindigenous person. The indigenous infant mortality rate was 2.8 times and the maternal mortality rate was 4 times the rates found in nonindigenous populations. According to the Australian Institute of Health and Welfare, between 1998 and 2000, tuberculosis and hepatitis A and B rates among indigenous people were, respectively, 3.9 times greater, 5.2 times greater, and 6 times greater than rates among the nonindigenous.

According to the Department of Family and Community Services, indigenous youth were 2.5 times more likely than nonindigenous youth to leave school before completing high school. The ATSIC 2000-2001 report estimated that the indigenous unemployment rate was 23 percent, 3 times that of the general population, and that employment was concentrated mainly in government and the indigenous service industry sectors, or in low-skilled jobs. Indigenous citizens were nearly 3 times more likely to be working as laborers and related workers and only half as likely to be employed as managers and administrators or in professional occupations, according to the latest

available (1998) figures from the ABS.

In August 1999, the Government, in identical motions passed by both Houses of the Federal Parliament, expressed public regret for past mistreatment of the Aboriginal minority; however, the government-sponsored motion of reconciliation was criticized by many Aboriginal leaders as not going far enough. Prime Minister Howard acknowledged the "most blemished chapter in our national history" and submitted a seven-point motion to Parliament. Howard proposed that Parliament express "its deep and sincere regret" that Aboriginals had "suffered injustices under the practices of past generations, and for the hurt and trauma that many indigenous people continue to feel." However, both Aboriginal and opposition leaders stated that only a full apology would be sufficient. The Government also continued to oppose an official apology for the "Stolen Generation" of Aboriginal children, who were taken from their parents by the Government from 1910 until the early 1970s and raised by foster parents and orphanages. The Government's position remained that the present generation had no responsibility to apologize for the wrongs of a previous generation.

In 2000 a federal court ruled against two claims for government compensation by members of the "Stolen Generation," stating that they did not provide sufficient proof that they had been taken without parental consent. However, the presiding judge stressed that the ruling did not settle the question of compensation for "stolen" children as a whole. Also in 2000, the UNHRC urged the Government to do more to provide a remedy for members of the "Stolen Generation" (see Section 4). During this year, the High Court dismissed a hearing request by claimants in the 2000 case. There were new calls for a reparations commission for the "Stolen Generation," including an ATSIC proposal that the Government establish a Reparations Tribunal to avoid costly future legal battles.

Following the 1997 publication of HREOC's landmark report on the "Stolen Generation" entitled "Bringing Them Home," the Federal Government allocated $34.27 million (A$63 million) over 4 years to a comprehensive package of initiatives to facilitate family reunification and assist victims in coping with separation trauma. At the end of the fiscal year, all $34.27 million had been disbursed. In addition, the 2001-02 federal budget allocated a further $29.32 million (A$53.9 million) over a 4-year period for programs under this initiative.

The Government's approach toward Aboriginals emphasized a "practical reconciliation" aimed at raising the health, education, and living standards of indigenous people. Following the 2001 parliamentary elections, the Prime Minister designated a minister to serve as both Minister Assisting the Prime Minister for Reconciliation and Minister of Immigration and Multicultural and Indigenous Affairs. The latter portfolio includes oversight of the Department of Reconciliation and Aboriginal and Torres Strait Islander Affairs, previously its own department. The mandate of the Council for Aboriginal Reconciliation (CAR), created by Parliament in 1991, expired in 2000. The CAR's final report was released in December 2000 and included recommendations for a constitutional amendment to make racial discrimination unlawful, as well as federal and state performance benchmarks and timelines to overcome Aboriginal disadvantage and enactment of legislation furthering reconciliation principles. It also called for preparation of parliamentary legislation providing for a referendum on deleting Section 25 of the Constitution, which denies voting rights in Federal elections to any person previously denied the franchise on racial grounds under State laws. (In practice, this section has no impact, as there are no race-based exclusions in state voting laws.) The report also recommended that appropriate recognition be given to the Aboriginal people and Torres Strait Islanders as the original inhabitants of the land.

In 2000 federal and state government leaders agreed to promote the economic welfare of indigenous people and reduce economic disparity. Under the agreement, a Federal-State leadership group, the Council of Australian Governments (CAR), would monitor progress toward these goals. At year's end, the Government had not acted on the CAR recommendations for a referendum, a Constitutional amendment, or recognition of the Aboriginal and Torres Strait Islanders as original inhabitants of the land.

Reconciliation Australia, Ltd., a private foundation with government funding, replaced CAR in 2000. Chairman Geoff Clark called on the foundation to strive for a true reconciliation guaranteed by both formal recognition of indigenous rights and a treaty. However, the Government remained opposed to a treaty on the principle that treaties could exist only between nations. There was some discussion of reconciliation treaties between Aboriginals and individual states; at year's end, no legislative action had been taken.

On July 22, the Federal Government commemorated the opening of a government-funded "reconciliation park" in Canberra.
The NGO Aboriginal Tent Embassy in Canberra set up a small structure on public land opposite the Old Parliament building and worked to publicize Aboriginal grievances. Other Aboriginal NGOs included groups working on native title issues, reconciliation, deaths in custody, and Aboriginal rights in general. International NGOs, such as Amnesty International, also monitored and reported on indigenous issues and rights.

National/Racial/Ethnic Minorities

Although Asians are less than 5 percent of the population, they make up 40 percent of new immigrants. Public opinion surveys had indicated concern with the number of new immigrants, and in 1996 the Government reduced the annual nonrefugee immigration quota by 10 percent to a maximum of 74,000. It was subsequently raised to approximately 80,000 and expanded to 93,000 during the year. The annual quota for humanitarian resettlement of refugees remained constant at approximately 12,000. However, a marked increase in unauthorized boat arrivals from the Middle East during the period from 1998-2001 heightened public concern that "queue jumpers" and alien smugglers were abusing the country's refugee program. Leaders in the ethnic and immigrant communities expressed concern that increased numbers of illegal arrivals and violence at migrant detention centers had contributed to incidents of vilification of immigrants and minorities. Following the September 11, 2001, terrorist attacks, there were allegations of verbal harassment and threats against Muslim residents, and a mosque in Brisbane was attacked by an arsonist. In December a former security officer convicted of the arson was sentenced to 6 years in prison.

In March 116 NGOs, churches, unions, and government agencies joined the Acting Race Discrimination Commissioner at a 2-day national conference on tackling racism in the country. According to the 2001-02 HREOC report, the number of racial discrimination complaints fell by 30 percent during the year. Of 186 reported cases, 35 percent involved employment; 29 percent involved provision of goods, services, and facilities; and 19 percent alleged "racial hatred." Non-English speakers filed 31 percent of the complaints and Aboriginals and Torres Strait Islanders only 13 percent. However, following the deaths of 88 citizens in an October terrorist bombing in Bali, the press reported an increase in racially motivated incidents.

Section 6 Worker Rights

a. The Right of Association

The law provides workers, including public servants, freedom of association domestically and internationally, and workers exercised this right in practice. The law also provides for employer associations. In August 2001, an ABS survey indicated that union membership had declined slightly, to 24.5 percent of the workforce.

Unions carry out their functions free from government or political control, but most local affiliates belonged to state branches of the ALP. Union members made up at least 50 percent of the delegates to ALP State and Territory conferences, but unions did not participate or vote as a bloc.

The 1996 Federal Workplace Relations Act contained curbs on union power, restrictions on strikes (see Section 6.b.), and an unfair-dismissal system which limited redress and compensation claims by employees. Several unions have objected to the law, alleging it violated the right to assembly provided for in several ILO conventions that the Government has signed. The primary curb on union power is the abolition of closed shops and union demarcations. This provision could create many small and competing unions at the enterprise level, but thus far there have been few changes in existing union structures. The only enterprise union to be registered under the provisions of the act, the Ansett Pilots Association, disappeared following the decision of company administrators to close down Ansett Airlines at the beginning of the year.

Unions may form and join federations or confederations freely, and they actively participated in international bodies. However, in March 2000, the ILO's Committee on Freedom of Association also recommended that the Government take measures, including amending legislation, to ensure that in the future trade union organizations are entitled to maintain contacts with international trade union organizations and to participate in their legitimate activities. The Government rejected this recommendation.

b. The Right to Organize and Bargain Collectively

The law at all levels (federal, state, and territories) provides workers with the right to organize and bargain collectively, and the law protects them from antiunion discrimination; the Government respected these rights in practice. In August the Western Australian Labor government enacted the Labor Relations Reform Act of 2002. The act repealed laws that permitted individual contracts to override collective agreements, reversed many of the discriminatory measures against trade unions contained in 1997 legislation, and removed requirements that unions undertake complicated pre-strike ballots.

At a federal level, the negotiation of contracts covering wages and working conditions shifted from the centralized awards system of the past to enterprise-level agreements certified by the Australian Industrial Relations

Commission (AIRC). In 2001-02, the AIRC certified 6,738 enterprise agreements, which was an increase of 8 percent from the number certified in 1997-98. The federal, state, and territorial governments administered centralized minimum-wage awards and provided quasi-judicial arbitration of disputes, supplemented by industry-wide or company-by-company collective bargaining. The Workplace Relations Act provided for the negotiation of Australian Workplace Agreements (AWAs) between employers and individual workers. These agreements were subject to far fewer government regulations than the awards; however, AWAs must meet comparable standards for basic working conditions as an award in the same sector. The Office of the Employment Advocate reported that the OAE and AIRC had approved 290,029 AWAs since March 1997. This year 8,338 AWAs were approved, covering 5,074 employers. In 2000 the ILO recommended that the Government amend legislation so that workplace agreements did not undermine the right to bargain collectively; the Government rejected this recommendation. Ending a long-running dispute, in 2001 a federal court ruled that a mining company could offer individual employment contracts with superior conditions (as compared to workers covered by collective bargaining agreements) to iron ore miners in the Pilbara region of Western Australia. However, workers could not be compelled to accept the individual work agreements, and unions retained the right not only to represent employees who supported collective bargaining but also those who elected to accept an individual work agreement.

An implicit right to strike was legalized in 1994 legislation. The 1996 Workplace Relations Act significantly restricted the right of workers to take industrial action, including heavy fines for labor unrest during the life of an agreement and tougher secondary-boycott provisions, and confined it to the period of bargaining, where it remains a protected action. Protected action provides employers, employees, and unions with legal immunity from claims of losses incurred by industrial action during the formal period of bargaining over a new enterprise agreement. In April 1999, a union successfully challenged this provision in federal court; the court refused to grant an injunction against the union for taking industrial action outside of a bargaining period because it was in support of maintaining existing wages and conditions. Parliament has rejected on four occasions the Government's proposed associated legislative changes to the Federal Trade Practices law, which would have provided companies with resort to legal action if they were subject to secondary boycott action. There has been no significant increase in industrial actions taken outside the bargaining period, and the decision has not been appealed to date.

During the year, the most notable national industrial actions were against the airline industry and component parts manufacturers associated with the motor vehicle industry. There were also short localized strikes by nurses, teachers, and construction workers. The Bureau of Statistics reported 684 industrial disputes for 2001-02, down 2 percent from the previous year; over the same period, workdays lost due to strikes fell by 6 percent to 329,300. During the year, the national union federation, the Australian Council of Trade Unions (ACTU), also campaigned to increase the minimum wage, to establish a new benchmark for weekly working hours (especially as related to mandatory overtime), and to protect employee entitlements in the face of numerous company collapses. In one important case, the Industrial Relations Commission refused the ACTU's request to set a standard for "reasonable working hours" but allowed workers to refuse without penalty to work unreasonable overtime. Laws and regulations prohibit retribution against strikers and labor leaders, and they were effectively enforced. In practice employers avoided available legal remedies such as secondary boycott injunctions in order to preserve amicable long-term relationships with their unions.

In 2000 the ILO's Committee on Freedom of Association recommended substantial changes to the Workplace Relations Act and the Trade Practices Act after examining complaints of antiunion discrimination raised by both domestic and international trade unions over the Government's role in a 1998 labor dispute involving stevedores. Specifically, the ILO recommended that the Government amend the Workplace Relations Act to eliminate the linkage between restrictions on strike action and legal provisions on interference with trade and commerce. The ILO also criticized the Government's use of serving defense force personnel as replacement workers in the 1998 strike. The Government stated, in response to the recommendations, that the ILO's comments "reflect an inadequate understanding of Australian law." The Government rejected all of the ILO's recommendations.

There are no export processing zones. The Darwin Trade Development Zone, Northern Territory, attempted to increase exports via a geographically defined free trade zone. In practice the Darwin initiative was focused almost exclusively on Asian trading partners to the north and west.

c. Prohibition of Forced or Bonded Labor

Although there are no federal laws prohibiting it, forced labor, including forced and bonded labor by children, generally is not practiced. While there were instances of such practices in the past, there were no reports of this activity during the year.

d. Status of Child Labor Practices and Minimum Age for Employment

There is no federally mandated minimum age of employment, but state-imposed compulsory educational requirements, which were enforced by state educational authorities, effectively prevented most children from joining the work force until they were 15 or 16 years of age. Federal and state governments monitored and enforced a network of laws, which varied from state to state, governing the minimum school-leaving age, the minimum age to claim unemployment benefits, and the minimum age to engage in specified occupations.

The country has not ratified ILO Convention 182 on the worst forms of child labor.

Federal law does not explicitly prohibit forced and bonded labor by children, but such practices generally were not known to occur, although there have been instances of such abuses in past years (see Section 6.f.). As a result of the April 1999 discovery of children working in several clothing sweatshops in Sydney and Melbourne, the Attorney General's Department stated that it would study existing laws and consider whether new legislation would strengthen the Government's ability to combat the problem. The Federal Government took no action on this problem during the year; however, the state governments of Victoria and New South Wales enacted legislation to strengthen protections for children in the workplace in 2001. In November 2001, the Victoria state government substantially raised fines for child labor abuses within the state.

Most cases of abuse in the last several years have involved members of ethnic communities from nations where child labor is not uncommon.

e. Acceptable Conditions of Work

Although a formal minimum wage exists, it has not been relevant in wage agreements since the 1960s. Instead, differing minimum wage rates for individual trades and professions covered 80 percent of all workers; all rates were enough to provide a decent standard of living for a worker and family.

Most workers were employees of incorporated organizations. A complex body of applicable government regulations, as well as decisions of applicable federal or state industrial relations commissions, prescribed a 40-hour or shorter workweek, paid vacations, sick leave, and other benefits. The minimum standards for wages, working hours, and conditions were set by a series of "awards" (basic contracts for individual industries). Some awards specified that workers must have a 24- or 48-hour rest break each week while others specified only the number of days off per number of days worked.

Over the past 2 decades, there has been a substantial increase in the percentage of the workforce regarded as temporary workers. In 2001 there were 2.1 million persons (27 percent of the workforce) employed as casual or temporary workers, even though government statistics indicated that over 50 percent had been employed in the same job for over 12 months, and 67 percent worked regular hours. Such employees were not entitled to certain employment benefits such as sick leave or annual leave, but were paid at a higher hourly wage rate.

Federal or state occupational health and safety laws apply to every workplace.

The law provides federal employees with the right to cease work without endangering their future employment if they believe that particular work activities pose an immediate threat to individual health or safety. Most states and territories have laws that grant similar rights to their employees. At a minimum, private sector employees have recourse to state health and safety commissions, which investigate complaints and demand remedial action.

Labor law protects citizens, permanent residents, and migrant workers alike. Migrant worker visas required that employers respect these protections and provide bonds to cover health insurance, worker compensation insurance, unemployment insurance, and other benefits. Reports of abuse of foreign workers generally referred to permanent residents who performed work in their homes in the clothing and construction industries.

f. Trafficking in Persons

Legislation enacted in late 1999 targets criminal practices associated with trafficking, and other laws address smuggling of migrants. Trafficking in persons from Asia, particularly women, was a limited problem that the Government took steps to address as part of a broader effort against "people smuggling," defined as "illegally bringing noncitizens into the country." Smuggling of persons in all forms, including trafficking, is prohibited by the Migration Act, with penalties of up to 20 years' imprisonment. In 2001 Parliament also enacted the Border Protection Act, which authorized the boarding and searching of vessels in international waters, if suspected of smuggling of or trafficking in persons.

In February Indonesia and Australia co-chaired a 38-country Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime. The conference participants established a series of expert working groups to develop ways to combat people smuggling and trafficking.

Also in February, the Government established a new position of Ambassador for People Smuggling Issues, with responsibility for promoting a coherent and effective international approach to combating people smuggling (particularly in the Asia-Pacific region), assisting as appropriate in the negotiation of international agreements for return, readmission, and resettlement of persons brought into Australia, and working for the prosecution of smugglers and traffickers in persons. The Ambassador also was tasked with following up on the results of the Regional Ministerial conferences on People Smuggling, Trafficking in Persons and Related Transnational Crime.

The country is a destination for trafficked women. In 2001 the Australian Institute of Criminology issued a report entitled Organized Crime in People Smuggling and Trafficking to Australia, which observed that the incidence of trafficking appeared to be low. However, the Government, NGOs, and journalists agreed that an unknown number of women were being trafficked into the country each year. DIMIA and the Australian Federal Police reported that women from Thailand, the Philippines, Malaysia, China, Indonesia, South Korea, Vietnam, and parts of the former Soviet Union were brought into the country for the purpose of prostitution, entering with fraudulently obtained tourist or student visas. There were also reports of women trafficked into the country from Afghanistan and Iraq. In the past, there were reports of trafficking in women to work in sweatshops in the textile, clothing, and footwear industries as well as in service industries, sometimes as bonded labor. However, there were no such reports during the year.

There have been some instances of organized crime groups forcing foreign women to work as sex workers. Some reports indicated that women working in the sex industry became mired in debt or were physically forced to keep working, and that women in irregular immigration status were pressured to accept hazardous working conditions. Some women were subjected to indentured sexual servitude to pay debts to their traffickers. In the past, women were found locked in safe houses with barred windows or under 24-hour escort, with limited access to medical care or the outside world. Some women were lured by offers of employment as waitresses, maids, or dancers and were not aware that they would be employed as prostitutes after entering the country. In some cases, women were coerced by criminal elements operating in their home countries. There were also reports of young women, primarily from Asia, sold into the sex industry by impoverished families. However, available evidence indicated that such cases were not widespread, and that most women working in the sex industry were not coerced.

Prostitution is legal or decriminalized in many areas of the states and territories, but health and safety standards varied widely and were not well enforced. In 1999 the Criminal Code Amendment (Slavery and Sexual Servitude) Act came into force. The act modernized the country's slavery laws, and contained new provisions directed at slavery, sexual servitude, and deceptive recruiting to address the growing and lucrative trade in persons for the purposes of sexual exploitation. Under the act, conduct that amounts to slavery, or exercising a power of ownership over another person, carries a maximum penalty of 25 years' imprisonment. Where a person engaged to provide sexual services is not free to cease or to leave because of force or threats, those responsible face penalties of up to 15 years' imprisonment, or 19 years if the victim is under age 18. A person who deceptively induces another person to provide sexual services faces a penalty of up to 7 years' imprisonment, or 9 years if the victim is under age 18. The act provides for penalties of up to 25 years' imprisonment and was part of a federal, state, and territory package of legislation. However, prosecution has been hampered by the difficulty of identifying victims or traffickers and the unwillingness or inability of witnesses to testify. No prosecutions have been brought under this federal law to date.

In 1994 the Government amended the Federal Crimes Act to provide for offences such as child sex tourism and related matters. (Under the laws of various states, it already was illegal for an adult to have sexual relations with a child.) These provisions allowed for the investigation and prosecution of citizens who traveled overseas and engaged in illegal sexual conduct with children. Under the act, there have been 16 investigations to date, resulting in 10 convictions and two dismissals. Four cases were pending at year’s end.

In 2001 the Government amended the criminal code provisions relating to child sex tourism and sexual slavery and servitude better to protect the interests of child complainants and child witnesses. These amendments recognized that child complainants and child witnesses were particularly vulnerable because of their age and nature of the crime involved. The provisions protect the children's privacy and protect the children from intrusive cross-examination while giving evidence, allowing them to give evidence by means of closed circuit television.
During the year, the Customs Service increased monitoring of all travelers suspected of involvement in the sex trade, either as employees or employers.

In 2001 DIMIA created an antitrafficking unit in New South Wales to assess the extent of trafficking in the Sydney

area; at year's end, the assessment was ongoing. Also in 2001, Australian Aid (AUSAID) began a development project to build the capacity of local agencies working to prevent trafficking in Southeast Asia. Through AUSAID, the country also sponsored training courses for travel agents and others to help prevent child sex tourism. It also contributed $3.48 million (A$6.4 million) to a three-year multidonor U.N. Development Program project to combat trafficking in women and children and an International Organization for Migration project to assist in the return and reintegration of trafficked and vulnerable women in Southeast Asian countries.

There were no NGOs devoted specifically to trafficking victims; however, assistance was available through NGOs that ran shelters for women and youth; sex worker organizations; and Project Respect, a consortium of organizations that combat exploitation or trafficking of adults and children for pornography. Some of these NGOs received government funding; others were funded privately.